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Nos. 577-581, 585-587

In the Supreme Court of the United States

OCTOBER TERM, 1935

RICKERT RICE MILLS, INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

A. B. DORE, Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

UNITED RICE MILLING PRODUCTS CO., INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

BATON ROUGE RICE MILL, INC., Petitioner,

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T. SIMON, Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

LEVY RICE MILLING CO., INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

FARMERS RICE MILLING CO., INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

NOBLE-TROTTER RICE MILLING CO., INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMICUS CURIAE

FRANK J. MORLEY,
THOMAS NELSON PERKINS,
WARREN F. FARR,
ROPES, GRAY, BOYDEN & PERKINS,
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CHARLES B. RUGG
Amicus Curiae

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In the Supreme Court of the United States

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Nos. 577-581, 585-587

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RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

A. B. DORE, Petitioner,
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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The undersigned respectfully petitions this Honorable Court for leave to file a brief as *amicus curiae* in the above-entitled suit. The Solicitor General and counsel for the respondents have assented in writing, as indicated by letters filed with the Clerk of this Court.

Your petitioner applies as counsel for the General Mills, Inc., Pillsbury Flour Mills Co., Commander Larabee Corp., Russell Miller Milling Co., and International Milling Co. Each of these concerns, directly or through its subsidiaries, is engaged in the processing of wheat. Each has paid substantial amounts to the Government as processing taxes. Several suits in equity in various federal courts, seeking to enjoin the collection of these taxes on the ground of the unconstitutionality of the Agricultural Adjustment Act, both before and after the amendments of August 24, 1935, have been brought by these mills.

They are all genuinely interested in the decision of the questions concerning the right to injunctive relief against the collection of the processing taxes and the constitutionality of the Act as presented in this suit.

Respectfully submitted,

CHARLES B. RUGG.

December 16, 1935.

In the Supreme Court of the United States

OCTOBER TERM, 1935

Nos. 577-581, 585-587

RICKERT RICE MILLS, INC., Petitioner,

v.

RUFUS W. FONTENOT, Individually and as Acting United States Collector of Internal Revenue for the District of Louisiana, Respondent.

And seven other consolidated cases.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMICUS CURIAE

PRELIMINARY STATEMENT

This brief is filed by counsel for General Mills, Inc., Pillsbury Flour Mills Co., Commander Larabee Corp., Russell Miller Milling Co., and International Milling Co. as *amicus curiae.*

For the purposes of our argument we assume that the so-called processing taxes levied after August 24, 1935, under the Agricultural Adjustment Act as amended are unconstitutional, and consider only the question whether, on that assumption, processors are entitled to equitable relief by way of injunction against the collection of such taxes. In discussing that question we consider merely whether R. S. §3224 and the amendments of August 24, 1935, deprive the courts of jurisdiction to grant such relief, and whether the conditions imposed by those amendments upon the processor's right of recovery are so incomprehensible and lacking in certainty of meaning

as to deprive the processor of a plain, adequate and complete remedy at law. We purposely refrain from discussing the question whether peculiarities in the nature of any particular industry or in the manner in which any individual business is conducted render it impossible to establish the facts which are made prerequisite to recovery, since we conceive that in this respect the adequacy of the legal remedy might depend upon the evidence adduced in the individual case. The arguments here submitted are believed to be of general application to all persons subject to the processing taxes imposed by the Agricultural Adjustment Act.

In the interest of brevity we are not printing the relevant statutes, which are set forth in the petitioners' brief.

SUMMARY OF ARGUMENT

I. It has always been recognized that the general rule against enjoining the collection of taxes is subject to an exception when, in addition to the illegality or unconstitutionality of the tax, there exist special circumstances bringing the case under some acknowledged head of equity jurisprudence. Since R. S. §3224 is merely declaratory of the general rule, with special reference to federal taxes, it has always been regarded as subject to the same exception. The plain import of this Court's decisions in both state and federal tax cases is that an injunction should be granted when the taxpayer lacks a plain, adequate and complete remedy at law.

Section 21(a) of the Agricultural Adjustment Act as amended does not evidence an intention on the part of Congress that the prohibition against injunctions should be absolute with regard to processing taxes. That section was not intended to limit the jurisdiction of the

courts. Being substantially identical with R. S. §3224 it must be similarly construed.

II. Section 21(d) of the Agricultural Adjustment Act as amended deprives processors of a plain, adequate and complete remedy at law. The requirement that processors establish that they have not passed on any part of the tax sought to be recovered is without intelligible meaning. It discloses only a broad purpose that taxpayers shall not be unjustly enriched and sets up no standard indicative of what Congress thought would constitute unjust enrichment. The processing tax is not like a sales tax. It is one of the many costs incident to manufacturing finished products from raw commodities, and its effect upon the price ultimately received by the manufacturer is not distinguishable from the effect of any other item of cost. This being so, it is impossible to determine whether the tax has been passed on, unless that term be given some arbitrary meaning not apparent from the statute. The mere fact that a processor sells his goods for a price sufficient to reimburse him for his costs, including the tax, does not prove that he would be unjustly enriched by a refund of the tax. A mere comparison of prices received before and after the imposition of the tax will not show whether the tax has been passed on. Nor will a comparison of the respective margins of profit or loss solve the problem. It could be wholly solved only by showing what the market price would have been if there had been no tax. This would involve pure speculation and could not possibly be proved.

The requirement that the processor establish that the price paid by him for the raw commodity has not been reduced by any part of the amount of the tax is equally

insusceptible of fulfillment. The effect of the processing tax to be paid by the processor cannot possibly be distinguished from the effect of the many other factors which influence market prices. To make recovery conditional upon proof of facts impossible of proof is to make the remedy virtually non-existent.

III. The respondent's contention that the taxpayer should be remitted to his remedy at law under Section 21(d) because in some way or other the courts may work out an interpretation of that section which will be fair and reasonable runs counter to well established principles of equity. If the remedy at law is not clear and free from ambiguity, equity will take jurisdiction. Taxpayers have consistently been granted equitable relief where statutes purporting to afford a legal remedy were of doubtful meaning or had never been construed.

The further suggestion of the respondent that, unless Section 21(d) is interpreted so as to allow the taxpayer adequate recovery, its provisions may be disregarded as unconstitutional when suit is brought for refund, and that the taxpayer, therefore, has no occasion to seek equitable relief now, rests on a false premise. The section might be held valid, although it took away all remedy, as being an assertion of the government's refusal to be sued. Even if it were unconstitutional so far as it barred suit against collectors individually, the mere right to sue individual collectors alone would be inadequate because of the impossibility of ever obtaining satisfaction of judgments against them.

ARGUMENT

I.

COLLECTION OF AN UNCONSTITUTIONAL TAX MAY BE ENJOINED, NOTWITHSTANDING R. S. §3224 AND SECTION 21(a) OF THE AGRICULTURAL ADJUSTMENT ACT AS AMENDED, IF THE TAXPAYER LACKS A PLAIN, ADEQUATE AND COMPLETE REMEDY AT LAW.

A. It is settled that R. S. § 3224 does not bar equitable relief when the remedy by way of suit for refund is not plain, adequate and complete.

It has long been an established principle of equity jurisprudence that the collection of a tax will not be enjoined on the sole ground that the tax is illegal or in violation of the Constitution. *Dows* v. *City of Chicago,* 11 Wall. 108; *State Railroad Tax Cases,* 92 U. S. 575; *Shelton* v. *Platt,* 139 U. S. 591; *Henrietta Mills* v. *Rutherford County,* 281 U. S. 121. But from the earliest times this Court in reiterating this general rule has expressly and consistently recognized that when, in addition to the illegality of the tax, there exist special circumstances bringing the case under some acknowledged head of equity jurisprudence, collection may properly be enjoined. *Dows* v. *City of Chicago, supra,* at p. 110; *Hannewinkle* v. *Georgetown,* 15 Wall. 547, 548; *State Railroad Tax Cases, supra,* at p. 613; *Union Pacific Ry. Co.* v. *Cheyenne,* 113 U. S. 516; *Miller* v. *Standard Nut Margarine Co.,* 284 U. S. 498, 509. The general rule is largely predicated on the fact that the taxpayer normally has a plain, adequate and complete remedy at law for the recovery of an illegal tax. As this Court observed in the *State Railroad Tax Cases, supra,* at p. 613, there has been provided "a complete system of corrective justice" by which taxpayers may have their rights determined, both in the executive departments and in

the courts, after the tax has been paid. The courts, generally speaking, are neither authorized nor equipped to apportion or equalize taxes or to make assessments. To permit judicial interference with the collection of the revenue, merely as a matter of convenience to the taxpayer, would seriously obstruct the processes of government. See *Miller* v. *Standard Nut Margarine Co., supra,* at p. 509; *State Railroad Tax Cases, supra,* pp. 613-617. When, however, no remedy at law is provided, or the remedy provided is inadequate or uncertain, the intervention of courts of equity is essential, not for the convenience of the taxpayer, but for the protection of his legal and constitutional rights.

It is now settled that the statutory inhibition on interference by courts of equity with the collection of federal taxes is subject to the same modifications and exceptions as the equity principle from which it was derived. The statutory provision, now constituting Section 3224 of the Revised Statutes first appeared in the Act of March 2, 1867, c. 169, 14 Stat. 475, as an amendment to Section 19 of the Act of July 13, 1866, c. 184, 14 Stat. 152 (R. S. §3226), which dealt with suits for the recovery of taxes illegally collected. The latter provision was an integral part of the "complete system of corrective justice", to which this Court referred in the *State Railroad Tax Cases, supra.* The prohibition on injunctions was in *pari materia* (*Snyder* v. *Marks,* 109 U. S. 189) and became a part of the same system, occupying a logical and rational place in that system since full provision was made for protection of the rights of taxpayers in courts of law. It merely codified and emphasized, with reference to federal taxes, the principle which the courts had always recognized. As this Court said in *Miller* v. *Standard Nut Margarine Co., supra,* at p. 509,

R. S. §3224 is declaratory of that principle "and is to be construed as near as may be in harmony with it and the reasons upon which it rests."

The plain import of the many decisions dealing with the subject of injunctions in tax cases is that an injunction may and should issue whenever the taxpayer, through no fault of his own, lacks a plain, adequate and complete remedy whereby he may recover through the usual processes of the law a tax which has been unconstitutionally or illegally exacted from him. There is grave doubt whether the exaction of an invalid tax and the withdrawal of all means of redress would not constitute deprivation of property without due process of law. See *Graham & Foster* v. *Goodcell,* 282 U. S. 409, 431; *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill,* 281 U. S. 673, 679 *et seq.* In any event, the courts have shown a natural disinclination to sanction such procedure and have without exception, so far as we are aware, granted relief in equity when the remedy at law appeared to be doubtful or lacking in efficacy.

Thus injunctions have been sustained in cases where the penalties for failure to pay the tax are such as to compel the taxpayer to comply, although obedience may result in confiscation of his property. *Ex parte Young,* 209 U. S. 123; *Ohio Tax Cases,* 232 U. S. 576, 587; *Hill* v. *Wallace,* 259 U. S. 44. The intervention of equity has also been held warranted where recovery at law would involve a multiplicity of actions by the same taxpayer (*Lee* v. *Bickell,* 292 U. S. 415; *Hill* v. *Wallace, supra; Wilson* v. *Illinois Southern Ry. Co.,* 263 U. S. 574) or where the financial ability of the taxing authority to satisfy a money judgment is in doubt (*Stewart Dry Goods Co.* v. *Lewis,* 287 U. S. 9). And in a number of cases this Court has held that injunctions should issue

when the existence of a remedy at law is not clear. *Davis* v. *Wakelee*, 156 U. S. 680, 687-688; *Union Pacific R.R. Co.* v. *Weld County*, 247 U. S. 282; *Dawson* v. *Kentucky Distilleries Co.*, 255 U. S. 288, 295-296; *Hopkins* v. *Southern California Telephone Co.*, 275 U. S. 393, 399; *Atlantic Coast Line R.R. Co.* v. *Daughton*, 262 U. S. 413.

In each of the above cases either there was no remedy at law or the remedy, if one existed, was not plain, adequate and complete. Manifestly this is the real criterion of the taxpayer's right to equitable relief, and the various grounds specified in the above cases merely furnished instances of the inadequacy of the legal remedy available to the taxpayer in each case.

By reason of the fact that the refund procedure heretofore afforded by the federal revenue acts has in the great majority of instances proved entirely efficacious, cases arising under the federal statutes have been few in number; but where circumstances appealing to equity have existed the federal courts have not hesitated to grant relief. This Court has drawn no distinction between federal and state taxes, as regards the circumstances calling for the issuance of injunctions. That no such distinction exists would seem to follow of necessity from the holding in *Miller* v. *Standard Nut Margarine Co.*, 284 U. S. 498, 509, that R. S. §3224 is no more than declaratory of the principles governing injunctions in tax cases generally. Even in earlier cases, however, the Court manifested an assumption, when not expressly stating, that R. S. §3224 would not bar injunctive relief if there were no plain, adequate and complete remedy at law. Thus in all the cases in which R. S. §3224 has been enforced, reference has been made to the existence of such a remedy. See *Dodge* v. *Osborn*, 240 U. S. 118, 120-121; *Bailey* v. *George*, 259 U. S. 16, 20; *Graham* v.

DuPont, 262 U. S. 234, 258; *Phillips* v. *Commissioner,* 283 U. S. 589, 595-596.

B. Section 21(a) of the Agricultural Adjustment Act as amended should likewise be construed as not barring equitable relief if there is no plain, adequate and complete remedy at law.

Section 21(a) of the Agricultural Adjustment Act, as amended by the Act of August 24, 1935, provides:

> "No suit, action, or proceeding (including probate, administration, receivership and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed * * * on or after the date of the adoption of this amendment * * * ".[1]

Except for the specific reference in Section 21(a) to probate, administration, receivership and bankruptcy proceedings, that section is substantially identical with R. S. §3224. Consequently it must be assumed that Congress, in enacting Section 21(a), adopted as a part of that section the settled interpretation of the earlier statute. Established rules of statutory construction compel this conclusion. *Hecht* v. *Malley,* 265 U. S. 144, 153; *Latimer* v. *United States,* 223 U. S. 501, 504; *Sessions* v. *Romadka,* 145 U. S. 29, 42. Moreover, this Court stated

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[1] It is to be observed that this section, by its terms, applies only to taxes imposed *on or after* the date of the adoption of the amendment, *i.e.* August 24, 1935. "Imposed" is the equivalent of "accrued". See *Cochran* v. *United States,* 254 U. S. 387; *Hertz* v. *Woodman,* 218 U. S. 205. Since the tax is laid on the first domestic processing of a basic agricultural commodity (Sec. 9(a) of the Act) and is assessed at monthly intervals (Reg. 81, Art. 11), it is manifestly "imposed" not later than the last day of the month during which the processing occurs. Thus the tax with respect to wheat processed during August is "imposed" not later than August 31, although it is not payable until the end of September.

emphatically in *Miller* v. *Standard Nut Margarine Co., supra,* that "specific language undoubtedly disclosing that purpose" would be required to justify the inference that Congress intended to abrogate the "salutary and well established rule" permitting injunctions in tax cases where special and extraordinary circumstances are present. No such language was found in R. S. §3224, nor is it discernible in Section 21(a). When the latter section was under consideration, Congress must have been acutely aware of the pendency of hundreds of suits throughout the country, seeking to enjoin the collection of processing taxes. Had it desired to abrogate the "salutary and well established rule", it would doubtless have so stated in plain and unambiguous language. Its adoption of a provision so nearly identical with that previously described by this Court as not sufficiently specific to disclose any such intention must be regarded as a plain indication that it contemplated no departure from the settled rule.

The express reference in Section 21(a) to probate, administration, receivership and bankruptcy proceedings, together with the provision that in such cases the claims of the United States for processing taxes shall be allowed and paid, warrants the inference that the chief purpose of that section was to make applicable to such proceedings the principle of R. S. §3224.[2] The latter section did

[2] This inference derives considerable support from a memorandum on the constitutionality of the proposed amendments to the Agricultural Adjustment Act, prepared by the Solicitor of the Department of Agriculture and printed for the use of the Senate Committee on Agriculture and Forestry. (U. S. Government Printing Office, 1935.) After citing R. S. §3224 as a precedent for Section 21(a), which was then numbered 21(b), the memorandum states (p. 23):

> "It is the Government's position that if such a provision is valid with respect to suits or proceedings which restrain the collection directly, then a similar provision may be made with respect to suits or proceedings which have a similar indirect effect."

not prevent the courts from restraining payment or collection of taxes as an incident to the exercise of their powers in receivership and like cases. See *Scott* v. *Western Pac. R. R. Co.*, 246 Fed. 545 (C.C.A. 9th); *Penn. Steel Co.* v. *New York City Ry. Co.*, 193 Fed. 286 (S.D.N.Y.), affirmed 198 Fed. 774 (C.C.A. 2d), affirmed sub. nom. *United States* v. *Whitridge*, 231 U. S. 144. *Cf. Hill* v. *Wallace*, 259 U. S. 44; *Brushaber* v. *Union Pacific R. R. Co.*, 240 U. S. 1; *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U. S. 429. This power of equity courts had been invoked by the receivers in the Hoosac Mills case (*Butler et al., Receivers* v. *United States*, 78 F. (2d) 1, now pending in this Court as No. 401, October Term, 1935), to test the constitutionality of the processing tax on cotton, and it is to be inferred that the Government wished to guard against future proceedings of the same character.[3]

We submit that Section 21(a) does not, and was not intended to, diminish or in any way affect the *jurisdiction* of Federal courts. Despite language in the opinion in *Dodge* v. *Brady*, 240 U. S. 122, 125, to the effect that R. S. §3224 is jurisdictional, it must be regarded as settled by the decision in *Miller* v. *Standard Nut Margarine Co.*, 284 U. S. 498, that that statute does not deprive the courts of the power to enjoin collection of taxes, but only reiterates a rule of equity jurisprudence as to the cases in which the power shall be exercised. As we have already pointed out, Section 21(a) is no stronger or more specific than R. S. §3224. That Congress appreciated the significance of the language used is plainly demonstrated by the legislative history of the amendments. Section 21, as originally reported by the

[3] Section 21(a) further prohibits proceedings under the Federal Declaratory Judgments Act in processing tax cases. This provision was presumably inserted because of the decision in *Penn.* v. *Glenn*, 10 F. Supp. 483 (W. D. Ky.) declaring the Kerr Tobacco Control Act invalid.

Senate Committee on Agriculture and Forestry, contained the present Section 21(a), as well as a subsection reading in part as follows:

> "No Federal or State Court *shall have jurisdiction* to entertain a suit or proceeding * * * (nor shall any such suit or proceeding be brought or maintained in * * * any such court) (1) for the recoupment, set-off, recovery, refund, or credit of, or on any counterclaim for, any amount of any tax. * * * " (Italics supplied.)

The reference to jurisdiction in the above provision was deliberate and intentional.[4] See Senate Report No. 1011, 74th Congress, 1st Session, p. 22. The inclusion in the same paragraph (which was eventually eliminated from the bill) of the provision that no suit shall be "brought or maintained" shows conclusively that Congress was aware of the difference in meaning and effect between the two expressions. The fact that the same words, "no suit * * * shall be brought or maintained" were

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[4] As first passed by the House of Representatives the bill prohibited the maintenance of a suit or the rendition of a judgment for the refund of any processing tax accrued prior to the adoption of the bill. The bill was amended by the Senate Committee on Agriculture and Forestry so as to deprive courts of jurisdiction to entertain such suits. This amendment occasioned extended debate in the Senate, both as to the power of Congress to deprive the courts of jurisdiction in this respect and as to the justice of such a provision. The propriety of the amendment was vigorously challenged by Senators Norris, Borah, George and others, and was defended by Senator Bankhead and others. See Congressional Record, 74th Cong., 1st Sess., pp. 11831-11847, 11855-11860, 11909-11914, 11919-11924. The jurisdictional provision was finally eliminated in favor of the present Section 21(d)(1). Senator Norris said (Cong. Record, *supra*, at p. 11914):

> "* * * I have no doubt that if the original amendment on page 58 had gone to a vote it would have been overwhelmingly defeated, and I was anxious to save the situation."

used in Section 21(a) strengthens the conclusion that no impairment of jurisdiction was intended.[5]

The committee reports state the purpose of Section 21(a) to be to "prevent the difficulties and embarrassments to the administration of the act" which are caused by injunction proceedings, and "to confine the taxpayer to the usual and orderly procedure of paying the tax and then suing for refund." House Report No. 1241, 74th Congress 1st Session, p. 20; Senate Report No. 1011, p. 23. The same purpose, of course, led to the enactment of R. S. §3224, as well as to the formulation of the principle of equity which that section embodies. See *State Railroad Tax Cases, supra.* Both sections manifestly presuppose the adequacy of the remedy at law. As has been pointed out, R. S. §3224 is but one feature of a comprehensive system designed to afford the taxpayer means of having his legal and constitutional rights determined and safeguarded, and at the same time to prevent undue delay in the collection of the public revenue. When, because of special and unusual circumstances, the normal method of obtaining a determination as to the validity of a tax proves inadequate to protect the taxpayer's rights, and the statutory scheme fails, R. S. §3224, does not bar equitable relief. *Miller* v. *Standard Nut Margarine Co., supra.* We contend that the same is true of Section 21(a). Congress undoubtedly supposed that the legal remedy for the refund of processing taxes, in the event such taxes should be held unconstitutional, would be adequate and efficacious. The Committee reports quoted above indicate that Section 21(a)

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[5] Compare Section 4 of the Act of March 23, 1932, c. 90, 47 Stat. 70 (U. S. C., Title 29, Sec. 104):

> "No court of the United States *shall have jurisdiction* to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute * * *". (Italics supplied.)

was adopted on that supposition. If, however, as we shall attempt to show hereafter, the legal remedy proves to be wholly uncertain and inadequate, the premise upon which Section 21(a) was based disappears, precisely as in the case of R. S. §3224. Only two alternatives remain: either to construe Section 21(a) as R. S. §3224 has been construed, or to assume that Congress intended processors to be without adequate means of protecting themselves against the imposition of a tax of doubtful validity. We submit that "specific language undoubtedly disclosing that purpose" would be necessary to justify the latter assumption.

II.

SECTION 21(d) OF THE AGRICULTURAL ADJUSTMENT ACT AS AMENDED DEPRIVES THE TAXPAYER OF A PLAIN, ADEQUATE AND COMPLETE REMEDY AT LAW.

A. The requirement that the taxpayer must establish that the tax has not been "passed on" to any person in any manner sets up no intelligible rule or standard of action.

Under R. S. §§ 3220, 3226 and 3228, which were made applicable to processing taxes by Section 19(b) of the Agricultural Adjustment Act there was available to processors, prior to August 24, 1935, the familiar remedy for recovery of taxes, requiring only a showing that the taxes had been illegally collected. By the amendatory Act of August 24, 1935, however, Congress drastically modified that remedy, so that a processor may no longer recover by showing simply that the taxes are illegal and that he has paid them, but must satisfy a multitude of other conditions as well. These other conditions are found in Section 21(d) (1) of the Act as amended, which is set out in full at page 77 of the petitioners' brief[6] In

[6] This section originated in a bill promulgated by the House Committee on Agriculture on June 5, 1935 (shortly after this Court's de-

substance that section provides that no refund shall be made of any amount of any processing tax unless it shall be established that neither the claimant nor any person directly or indirectly under his control or having control over him has, directly or indirectly—

(a) included such amount in the price of any article processed from the commodity with respect to which the tax was imposed, or

(b) passed on any part of such amount to any person in any manner, or

(c) included any part of such amount in the fee for processing, *and*

(d) that the price by the claimant or such person was not reduced by any part of such amount.

These facts must be established to the satisfaction of the Commissioner of Internal Revenue, and in any judicial proceeding to obtain a refund, a certified transcript of the proceedings before the Commissioner shall be "filed

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cision in *Schechter Poultry Corp.* v. *United States,* 295 U. S. 495) as a substitute for a pending bill (H.R. 8052) to amend the Agricultural Adjustment Act. The substitute bill contained a provision wholly prohibiting administrative or judicial refunds of taxes accrued prior to the adoption of the amendment. This provision was carried over, in slightly revised form, into a new bill (H.R. 8492) which was introduced on June 14, 1935, and which was the bill finally enacted. That bill also provided that there should be no refunds of taxes accruing after the adoption of the amendment unless the taxpayer established that he had not passed the tax on to his customers or passed it back to the producer of the commodity processed, or that he had repaid it to such producer or to the ultimate purchaser of the article manufactured by the processor, or that the producer and the ultimate purchaser consented to the allowance of the refund. The provision prohibiting refunds of taxes accrued prior to the amendment was eliminated by the Senate after considerable debate, and the passing on and passing back provision, in more drastic form, was made applicable to all taxes under the Act, but without the alternatives allowing recovery if the tax were repaid to the producer or ultimate consumer, or their consent to the allowance of the refund obtained. See note 4, *supra,* p. 14. See also House Report No. 1757, 74th Cong., 1st Sess., p. 32.

as the record in the case and shall be so considered by the Court."

In attempting to extract a rational and practicable meaning from Section 21(d) (1), *supra*, it is essential to bear in mind the nature of the tax with which that section is concerned. At first glance, the statute may appear to lay down straightforward, intelligible and equitable conditions with which any taxpayer should be able readily to comply. But when one attempts to translate those conditions into a workable mode of action, difficulties of the most fundamental character manifest themselves. The meaning which at first seemed clear is found to be vague and unascertainable. The precise intent of Congress becomes a matter of speculation.

The processing tax is in the nature of an excise and is levied upon the act of processing any one of the specified basic agricultural commodities. It is imposed the moment the processing operation begins, is measured by the number of units of the commodity put in process, and becomes payable solely by reason of the processing, regardless of whether the goods manufactured are ultimately sold or consumed. See Regulations 81, Art. 7; P.T. 10, XIII-1 C.B. 452. In the case of wheat, the tax is measured by the number of bushels of wheat put in process. See Wheat Regulations (T.D. 4579), Art. 2. It is not levied upon the sale of the resulting products, nor is it calculated upon the price for which such products are sold. Thus it differs in material respects, as will be shown more fully hereafter, from the tax considered by this Court in *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S. 386. It is imposed long prior to any sale by the taxpayer, bears no relation to such sale, and in particular is in no way dependent upon the sale price.

It is apparent, therefore, that the processing tax is not an immediate factor in the transaction whereby the taxpayer's product passes from him to the consumer, as is a sales tax. It is but an item of cost which is combined with the various other items, such as raw material, wages, repairs and depreciation, other taxes and management overhead, which go to make up the total cost to the manufacturer of the goods which he produces. In its influence upon the price received by the manufacturer for his goods after the entire manufacturing operation has been completed, the processing tax is not distinguishable from the other cost items mentioned above.

How, then, is the taxpayer to ascertain, in terms of judicial proof, whether the processing tax, as distinguished from all other expenses, has or has not been "included in the price" of his products or otherwise "passed on" to his vendee or any other person in any manner? The answer to this question depends primarily upon the effect to be given to the phrases "included in the price" and "passed on". Those phrases, we submit, do no more than evidence a general purpose that the taxpayer shall not recover if the economic burden of the tax has been shifted from him to any other person. No attempt is made to declare what constitutes "passing on" the tax, or to indicate how it may be determined whether the tax is passed on. The concept which the statute appears to embody lies in the broad field of economic generalization. Yet the science of economics furnishes no assistance in its practical application to the situation of an individual taxpayer. Only by adopting purely arbitrary standards could anyone purport to decide whether, and to what extent, the burden of a particular tax had been shifted. But the statute furnishes no standard, and none that might be suggested would

clearly and fully effectuate the vague purpose which Congress has expressed.

Since the processing tax constitutes part of the cost to the processor of converting raw agricultural commodities into consumable articles, the arbitrary rule might be adopted that any processor who sold his goods at not less than their total cost (including the amount of the tax) had passed the tax on. Although such a rule would derive some support from the provision that the tax must not have been "included in the price", we submit that this cannot have been what Congress intended. The only basis upon which any justification can be found for Section 21(d) (1) is that it was designed to prevent "unjust enrichment" by denying refunds to taxpayers who have not themselves been injured by the tax. See House Report No. 1241, 74th Cong. 1st Sess., p. 20; Senate Report No. 1011, p. 23; House Report No. 1757, p. 32. The mere fact that a processor has sold his goods at cost, including the tax as one item of cost, is no sign that the burden has not been borne by him. Such a rule would be manifestly unfair. It would deny recovery to a taxpayer who by absorbing the tax was unable to sell his goods for more than cost although prior to the imposition of the tax he had been able to realize a profit. *A fortiori* it would deny recovery to any taxpayer who made a profit, even though he had previously made a greater profit. On the other hand, any taxpayer who suffered a loss would automatically be regarded as having borne the burden of the tax, whether or not it appeared that the loss was occasioned by the tax as distinguished from other factors bearing upon costs and prices.[7]

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[7] In the report of the President's Cabinet Committee on the Cotton Textile Industry (Senate Document No. 126) the following statement is made (p. 141):

The District Court for the Southern District of Mississippi, denying an injunction in *Meridian Grain & Elevator Co.* v. *Fly*, 12 F. Supp. 64, 66, stated that the test of passing on was whether the processor realized a "fair" profit over and above the total cost of manufacture, including the amount of the tax. This rule, we submit, finds no support in the statute. It raises immediately the question of what is a reasonable profit, and the statute furnishes no clue. Moreover, like the rule previously suggested, it would permit recovery by all taxpayers selling at a loss. We feel confident that any such interpretation of the Act would be strenuously opposed by the Commissioner. There is no necessary relation between reasonable profits and the question whether the tax has been passed on. As between different manufacturers profits may widely differ even though substantially the same prices are received. A manufacturer leaving his prices unchanged after the imposition of the tax might still make a "reasonable" profit, although there could be no doubt that he had been injured by the tax.

In an unreported opinion granting a temporary injunction on August 1, 1935, in the case of *Armour & Co.* v. *Harrison*, the District Court for the Northern District of Illinois queried whether it would be possible for a processor selling his product for anything in excess of the amount of the processing tax to prove that he had

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"• • • Profits or losses for individual processors are, however, in themselves no proof that the processing tax has been passed on. For many years large numbers of establishments have been operating at losses and gradually going out of business. This situation would remain unchanged if all mills passed on the full amount of the processing tax. To argue that losses indicate failure to pass on the processing tax is tantamount to arguing that any loss which a mill may sustain should be ascribed to the processing tax."

not passed the tax on.[8] That court evidently recognized the impossibility of allocating the price received, if that were less than cost, as between the tax and other cost items. Thus if the flour manufactured from one bushel of wheat were sold for as little as thirty cents (the amount of the tax per bushel), it might be argued that the thirty cents, or some proportionate part of it, represented the tax.

The fallacy in the tests suggested above lies in their failure to recognize that there must be some causal connection between the processing tax and any increase in the price or margin of profit before it can properly be said that such increase shows the tax to have been passed on. The difficulty in abandoning such arbitrary rules is that any attempt to determine whether and to what extent the economic burden has actually been shifted requires consideration of matters not susceptible of proof.[9]

It may be suggested that the question whether the tax has been passed on can be answered by comparing prices received before and after the imposition of the tax. On

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[8] The portion of the opinion dealing with the question of "passing on" reads as follows:

> "I am not wholly inexperienced with the trial of lawsuits, and I am familiar with the way counsel go about proving facts, and for the life of me I cannot figure out how a processor, assuming that he sells the pork and sells it for *more than the amount of the processing tax,* would ever be able to prove he did not pass on the tax. I have not been able to figure that out. I do not think he could. I do not think as a practical proposition he could, so I think those are just words, just words that mean nothing" (Italics ours.)

[9] Section 21(d)(1) requires that the conditions therein prescribed be established "to the satisfaction of the Commissioner of Internal Revenue". This means that the facts are "not lightly to be inferred but to be established by proof which convinces in the sense of inducing belief." *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S. 386, 398.

this basis an increase in prices following the levying of the tax would be taken as proof that, at least to the extent of the increase, the tax was being passed on. This would be to assume, however, that the processing tax was the only new factor exercising an influence on prices, which is obviously not so. In the Report of the Cabinet Committee on the Cotton Textile Industry (see note 7, *supra*) it was said (p. 142):

> "It is impossible to disentangle the effect of any individual element of cost upon selling price. * * *"[10]

It is a matter of common knowledge that during the past two and a half years there has been a general rise in prices, even in the case of articles not manufactured from agricultural commodities. This is, no doubt, due in part to increased costs brought about by a variety of circumstances, including industrial and labor legislation. But beyond question there have been other influences at work which would have raised prices regardless of changes in costs. The devaluation of the currency, for example, was decreed for the express purpose, among others, of raising prices and thus giving an artificial stimulus to industry and agriculture. Federal relief expenditures and subsidies to the farming population have presumably contributed in some degree to the raising of prices. In order to determine the extent to which in any given case the enhancement of the price received was attributable to the processing tax, it would

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[10]The Report goes on to state, in the same paragraph:

> "The processing tax is commingled with other costs, and the competitive forces in the industry tend to operate to bring costs and prices into relation to each other. *In this sense,* the processing tax is, by and large, passed on to the consumer of the final product." (Italics supplied.)

We have previously pointed out (*supra*, p. 20) why we think Congress cannot have intended to use the expression "passed on" in this sense.

be necessary to discount all these other factors—a task which would require the most minute and accurate analysis of the entire economic situation. Obviously any estimate that might be attempted would fail to meet the test of judicial proof.[11]

The problem is not materially advanced if cost changes be eliminated and a comparison be made between the margin of profit or loss prior to the imposition of the tax with the margin of profit or loss after the tax became effective. Such a comparison would wholly ignore the other variables, such as supply, demand, consumer purchasing power, fluctuations in the currency, and so forth, the effect of which cannot possibly be calculated with any degree of precision. Yet it would appear to be conceded by the Government that the question whether the tax is passed on depends in large part upon factors such as these. In *Agricultural Adjustment, A Report of Administration of the Agricultural Adjustment Act, May 1933 to February 1934,* it is said (p. 220):

> "The question 'who pays the processing tax' cannot be answered by a mere examination of the change in producer, wholesale and retail prices and the final spread between them."

The only fair way of determining whether the processor has borne the burden of the tax would be to determine what the market price of his goods would have been if there had been no processing tax. This would, of

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[11] In *Baltic Mills Co.* v. *Bitgood,* 12 F. Supp. 132, 134, the District Court for the District of Connecticut said:

> "• • • Obviously a comparison of prices obtaining prior to the original imposition of the tax with the prices obtained in sales made two years later will not show whether a claimant under the amendment had absorbed the tax or passed it on. • • • Nor am I able to find in the amendment any suggestion as to whether the incidence of the tax is to be determined by the costs of the processor."

course be impossible to prove. In *International Harvester Co.* v. *Kentucky,* 234 U. S. 216, this Court had under consideration a statute prohibiting any combination for the purpose of obtaining prices which were greater or less than the real value of the article. The Kentucky courts had construed "real value" to mean market value under fair competition and normal market conditions. This Court said that to ascertain what prices would be under non-existent conditions would be "to exact gifts that mankind does not possess."

So, we submit, to require taxpayers to prove that they have not passed on any specific amount of the processing tax is to exact gifts that mankind does not possess. If some arbitrary test of passing on is to be adopted, it should have been formulated by Congress. No such test can be found in the body of economic theory from which Section 21(d)(1) appears to have been derived. Undoubtedly there is a tendency in the long run to pass on taxes and other expenses to the consuming public. See Seligman, *The Shifting and Incidence of Taxation* (5th ed.) p. 218. Economists recognize this tendency and attempt to trace the burden of taxation as it is shifted forward or backwards by the taxpayer. They do not, however, profess to explain more than "what will happen in the long run." Bastable, *Public Finance,* p. 367.[12] A careful examination of the authorities in this field has disclosed no test by which it may be determined to what extent a particular taxpayer has borne the burden of a tax paid during any specified period of time. The fact that such taxes are generally and in the long run passed on affords no comfort to the individual taxpayer who may not have passed on the tax *in toto* but knows no way of proving it.

[12] See also the authorities cited in a footnote to the dissenting opinion in *Indian Motocycle Co.* v. *United States,* 283 U. S. 570, 581.

The respondent will doubtless contend that this Court's decision in *United States* v. *Jefferson Electric Mfg. Co.*, 291 U. S. 386, shows that it is possible to prove whether a tax has been passed on, and is therefore conclusive as to the adequacy of the remedy afforded by Section 21(d) (1). This contention has been advanced in the lower courts and accepted by a few, but rejected by the majority. The opinions of those courts which have accepted that decision as a controlling authority on this question fail to consider the significant differences between the statutes involved.

The tax under consideration in the *Jefferson Electric* case was an excise tax on the sale by the manufacturer of automobile parts and accessories. It was based on the sale price of the article sold, not, as in the case of the processing tax, on the quantity of raw material going into the manufacture of such article. Consequently, the taxpayer had first to determine upon the sale price, exclusive of tax, and then, by applying the rate of tax to that price, to compute the amount of the tax. Once the sale price had been fixed, a comparison between that price and the amount paid by the customer showed whether the tax was being "passed on". As this Court said (pp. 405-406):

> "* * * If by its invoices the plaintiff represented to its purchasers that the amount shown thereon included the tax as well as the selling price, and if it returned that amount less the tax as the selling price, and caused the tax to be computed on that basis, it cannot be heard to say, in the absence of other controlling circumstances of which there is no finding, that it did not collect the tax from the purchasers but itself bore the burden thereof:"

The nature of the tax in that case made it possible to give an intelligible meaning to the statute. The taxpayers were not contending that they could not tell how much of the tax had been passed on; they asserted that none of it had been passed on, and relied on the method of invoicing their goods.[13] As we have pointed out, in the instant case there is no necessary relation between the tax and the selling price, and therefore the situation is entirely different, both as regards the meaning of the act and the practical feasibility of complying with its requirements. The assumption on which the Court proceeded in the *Jefferson Electric* case—that "if the taxpayer has borne the burden of the tax, he readily can show it"—does not hold true here.

B. The requirement that it be shown that the tax has not been "passed back" to the producer imposes upon the right to recover a condition impossible of fulfillment.

In addition to proving that he has not "passed on" the tax, a taxpayer in order to recover is required to prove that the price paid by him was not reduced by any part of the amount of the tax. This apparently reflects the theory of the Department of Agriculture that some part of the tax is, in some instances, "passed back" to the producers of agricultural commodities. See Report of the Chief of the Bureau of Agricultural Economics, 1935, p. 24. But it seems obvious that matters of this kind are wholly insusceptible of proof. Manifestly, evidence that the taxpayer had not consciously and inten-

[13] Even under that statute difficulties have arisen in ascertaining the sale price and thus the incidence of the tax burden. Compare *Virginia Carolina Rubber Co.* v. *United States*, 79 C. Cls. 693, with *American Chain Co.* v. *Hartford-Connecticut Trust Co.*, 11 F. Supp. 770 (D. Conn.). See also Regulations 47, Art. 3; S. T. 391, I-2 C. B. 293; Regulations 46, Art. 11.

tionally deducted any amount representing the tax or a portion of it, from the price which he would pay if there were no tax in effect, would not satisfy the burden of the statute. The condition of establishing that the market price which was paid has not in any way been affected by the existence of the tax, is one that it is impossible to fulfill. Purchases of raw basic agricultural commodities, rice, wheat, cotton, etc., are made in a competitive market. Competitive prices are paid. The market price fluctuates in response to varying conditions of supply, demand, costs of production, competition, market psychology and other factors.

The effect, if any, of the tax obligation of the processor on the price he pays is even more indirect than the effect of that obligation on the price he receives. The processing tax, if it affects the prices of commodities at all, is only one of many factors influencing those prices. To only a very limited extent is the price which he pays for a commodity within the control of the individual processor. If the market price which he is required to pay goes down, the processor cannot tell whether the fall has been caused by an anticipation that he and his fellow processors will have to pay processing taxes, or whether it is the result of other factors such as an increase in supply or a decrease in consumer demand.

These are questions as to which economists may form opinions, but we submit they are incapable of definite proof in any individual case. In order to show whether the tax has reduced the price of the commodity it would be necessary to show what the price of the commodity would have been if there had been no tax. This is not a fact that is merely difficult to ascertain. It is a fact

that it is impossible to determine. Any attempt to ascertain it would involve pure speculation. See *International Harvester Co.* v. *Kentucky,* 234 U. S. 216. Because the processor's right to recover is limited by the requirement that it shall establish facts not susceptible of proof, the remedy is illusory and fictitious. It is not a plain, adequate and complete remedy. It is no remedy at all.

III.

THE ADEQUACY OF THE REMEDY UNDER SECTION 21(d) MAY APPROPRIATELY BE DETERMINED IN THE PRESENT PROCEEDINGS.

Despite the allegations of fact in the petitioners' bills of complaint to the effect that the method of conducting the rice processing business renders it impossible for them to prove in any case whether or not the burden of the tax has been shifted to the purchaser or producer, the respondent contends that in any present day manufacturing business, under modern accounting systems, it is possible to trace into all finished products both direct and indirect costs. If costs can be so traced, the respondent asserts that it is then perfectly possible for the courts to work out some theory on which to determine whether the economic burden of the tax has been passed on or passed back within the meaning of Section 21(d)[14] What that theory may be, the respondent does

[14] The overwhelming majority of District Courts in which the provisions of Section 21(d) have been considered have concluded that, in view of allegations similar to those in the petitioners' bills, the section could not be said to afford an adequate remedy at law. See, *e.g., Baltic Mills Co.* v. *Bitgood,* 12 F. Supp. 132 (D. Conn.); *Kingan & Co.* v. *Smith* (S. D. Ind.), decided September, 1935, not yet reported; *John A. Gebelein, Inc.* v. *Milbourne,* 12 F. Supp. 105 (D. Md.); *Gold Medal Foods* v. *Landy* (D. Minn.) decided October 12, 1935, not yet reported; *Washburn Crosby Co.* v. *Nee* (W. D. Mo.) decided October 3, 1935, not yet reported; *A. R. W. Paper Co., Inc.* v. *Riley* (N. D.

not suggest. Section 21(d) itself, as we have already demonstrated, gives no clue to the possible tests to be employed. Whether any theory can be worked out which will afford a taxpayer any efficacious remedy is a matter of speculation. Yet the respondent insists that the taxpayer must pay the tax and rely on the chance that in some way Section 21(d) can be interpreted as to give a fair measure of recovery. Determination as to the meaning and efficacy of the relief provided by that section can be had, the petitioner contends, only in a proceeding brought under that section to recover a refund of taxes paid. This contention runs squarely counter to well established principles of equity jurisprudence that to deprive a court of equity of jurisdiction a remedy at law must be not merely adequate but clear and free from doubt. *Davis* v. *Wakelee*, 156 U. S. 680, 688; *Union Pacific R.R. Co.* v. *Weld County*, 247 U. S. 282, 285, 286; *Dawson* v. *Kentucky Distilleries & Warehouse Co.*, 255 U. S. 288, 296; *Atlantic Coast Line* v. *Daughton*, 262 U. S. 413, 426; *Stewart Dry Goods Co.* v. *Lewis*, 287 U. S. 9, 11. "Where equity can give relief plaintiff ought not to be compelled to speculate upon the chance of his obtaining relief at law." See *Davis* v. *Wakelee*, *supra*, at 688. Because of that principle, it has been held repeatedly that a plaintiff is not to be remitted to his remedy at law under a statute ambiguous in its phraseology or doubtful in its meaning. *Atlantic Coast Line* v. *Daughton*, 262 U. S. 413; *Union Pacific Railroad* v. *Weld*

N. Y.), decided October 18, 1935, not yet reported; *Federal Mill Inc.* v. *McGowan* (W. D. N. Y.), decided October 24, 1935, not yet reported; *G. B. R. Smith Milling Co.* v. *Thomas*, 11 F. Supp. 833 (N. D. Texas); *Shenandoah Milling Co.* v. *Early* (W. D. Va.), decided September 23, 1935, not yet reported; *G. M. Peet Packing Co.* v. *Kavanagh* (E. D. Mich.), decided October 15, 1935, not yet reported.

County, 247 U. S. 282; *Wallace* v. *Hines*, 253 U. S. 66, 68; *Dawson* v. *Kentucky Distilleries & Warehouse Co.*, 255 U. S. 288, 296; *Hopkins* v. *Southern California Telephone Co.*, 275 U. S. 393, 399; *Standard Oil Co.* v. *Fox*, 6 F. Supp. 494, 498, approved on appeal on this point in 294 U. S. 87; *Proctor & Gamble Distributing Co.* v. *Sherman*, 2 F. (2d) 165 (S. D., N. Y.).

The respondent further contends, however, that if, as the petitioners assert, the provisions of Section 21(d) impose a condition of proof which cannot be met by evidence of any character, then it is so arbitrary as to deprive them of their property without due process of law. In that case, respondent urges, the provisions of the section would not bar them in a proceeding to recover a refund of the tax. Hence, it is concluded that the petitioners might well recover the full amount of the tax without regard to whether they could prove what they had passed on. But the respondent's argument rests on a false premise. It assumes that if Section 21(d) requires proof of facts incapable of demonstration, it will necessarily be held invalid. But, we submit, it might well be held constitutional. Conceivably the United States may deny to taxpayers any right to sue it at law to recover taxes illegally paid. *Cf. Nichols* v. *United States*, 102 U. S. 122; *Pacific Steam Whaling Co.* v. *United States*, 187 U. S. 447, 452; *Lynch* v. *United States*, 292 U. S. 571, 581, 582. The imposition of a condition impossible of fulfillment might be deemed an assertion by the sovereign of its immunity from suit. It cannot be doubted that Section 21(d) would be constitutional if so treated, at least as far as suit against the United States itself was concerned. Although we believe the right to sue a collector individually could not be taken away constitutionally (see *Graham & Foster* v. *Goodcell*, 282 U. S.

409, 431), yet if the respondent is correct in the contention which it so earnestly advances, a suit against a collector stands in no different case from a suit against the government itself. Thus it might well be that Section 21(d) would be constitutional although its effect was to preclude any recovery at all. But plainly a taxpayer would not then have an adequate remedy at law. On the contrary, he would have no remedy at law. Moreover, if it be assumed that so far as Section 21(d) prevented any recovery from a collector individually it would be unconstitutional, the right of the taxpayer against the collector alone would not be adequate. It is apparent that the claims for refunds of taxes which have been paid in the amount of hundreds of millions of dollars could never be satisfied by individual collectors. Nor, on the assumption that Congress had withdrawn the consent of the United States to be sued, can it be supposed that it would appropriate money to satisfy judgments in such amounts against the collectors individually. The result would be that the mere right of action preserved against the collector would be valueless. Yet it is of the essence of an adequate remedy to recover taxes illegally collected that it be possible to obtain full satisfaction of any judgment rendered. *Stewart Dry Goods Co.* v. *Lewis,* 287 U. S. 9. We submit, therefore, that a taxpayer might well have no remedy even if Section 21(d) were found to be meaningless or to impose impossible conditions. The assertion of the respondent that in such a case its provisions could be brushed aside so that full recovery could be had is not necessarily sound. In view of that doubt, the remedy at law cannot be pronounced so clear as to deprive equity of jurisdiction. To remit the plaintiff to his rights at law is to require him to run the risk of having no remedy at all.

CONCLUSION

We submit that the decrees dismissing the petitioners' bills of complaint should be reversed.

Respectfully submitted,

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